

1 A F T E R N O O N S E S S I O N

2 JUDGE GILBERT: All right. We are back on the
3 record.

4 BARBARA R. ALEXANDER,
5 called as a witness herein, having been first duly
6 sworn, was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY

9 MS. SODERNA:

10 Q. Please state your full name and business
11 address for the record.

12 A. My name is Barbara R. Alexander,
13 A-l-e-x-a-n-d-e-r. I am located at 83 Wedgewood
14 Drive, Winthrop, Maine.

15 Q. And did you prepare written testimony for
16 this proceeding?

17 A. I did.

18 Q. And do you have before you your direct
19 testimony, rebuttal testimony, and surrebuttal
20 testimony filed on behalf of CUB and AARP, which is
21 collectively referred to as "The Consumer Groups?"

22 A. I do. I also have the exhibits.

1 Q. Right. And your direct testimony has been
2 labeled and submitted as Consumer Groups Exhibit
3 1.0, and that has attachments 1.1 through 1.5, and
4 your rebuttal testimony is labeled Consumer Groups
5 Exhibit 2.2, and that has attachments Exhibits 2.1
6 through 2.6, and your surrebuttal testimony is
7 labeled as Consumer Groups Exhibit 3.0, and that has
8 attachments 3.1 through 3.8.

9 Do you have any changes or corrections
10 to your testimony?

11 A. No, I do not.

12 Q. And was this testimony on the company's
13 exhibits prepared either by you or under your
14 supervision and direction for this proceeding?

15 A. They were all prepared by either me or
16 U. S. Energy Savings Corporation, yes.

17 Q. Okay. And do you have any changes or
18 corrections to your testimony?

19 A. No, I do not.

20 MS. SODERNA: And just for the record to be
21 clear, the testimony -- each of Ms. Alexander's
22 testimony has a confidential version, and those are

1 labeled 1.0C for the record, 2.0C, and 3.0C, and, in
2 addition, Exhibit 2.5 to Ms. Alexander's rebuttal
3 testimony is confidential, and Exhibits 3.2, 3.4,
4 3.5, and 3.8 are also marked confidential.

5 With that, I would like to move for the
6 admission of all of the Consumer Groups' exhibits I
7 just went.

8 JUDGE GILBERT: Okay. I want to review the
9 numbers, but first let me ask if there are any
10 objections to the admission of any or all of these?

11 MR. McMANAMAN: None, your Honor.

12 JUDGE GILBERT: Let me go through the numbers
13 because I fell a little behind there. There's a 1.0
14 and 1.0C. Those are admitted.

15 (Whereupon, Consumer
16 Groups Exhibit Nos. 1.0,
17 1.0C, 2.5, 3.2, 3.4,
18 3.5 & 3.8 were previously
19 marked for identification
20 and received in
21 evidence.)

22 1.1 through 1.5 none of those are

1 confidential. Confidential 1.1 through 1.5 are
2 admitted. 2.1 through 2.4 are admitted. The 2.5C
3 was admitted, and I believe it's 2.6. 2.6 is
4 admitted.

5 (Whereupon, Consumer
6 Groups Exhibit Nos. 1.1
7 thru 1.5, 2.1 thru 2.6
8 were previously marked
9 for identification and
10 received in evidence.)

11 All right. 3.1 is admitted, 3.2C,
12 3.3, 3.4C, 3.5C, 3.6, 3.7, 3.8C. Anyone confirm
13 that for me.

14 MS. SODERNA: That's correct.

15 JUDGE GILBERT: All of those are admitted.

16 (Whereupon, Consumer
17 Groups Exhibit
18 Nos. 3.1 thru 3.8C
19 was previously marked for
20 identification and
21 received in evidence.)

22

1 Ready to go?

2 MR. McMANAMAN: Yes, we are ready. Thank very
3 much.

4 CROSS EXAMINATION

5 BY

6 MR. McMANAMAN:

7 Q. Good afternoon, Ms. Alexander.

8 A. Good afternoon.

9 Q. Okay. This will be the streamline version.
10 This is not your first time testifying in a hearing
11 like this, correct?

12 A. That is correct.

13 Q. Okay. On how many occasions prior to today
14 have you testified in a contested hearing before a
15 regulatory body like this?

16 A. Counting my ten years experience on the
17 staff of the Maine Public Utilities Commission and
18 my consulting since 1996, I would say 30 times
19 minimum.

20 Q. Thirty times?

21 Have any of those times -- in any of
22 those times have you ever testified on behalf of the

1 company?

2 A. What company?

3 Q. Well, a company like Just Energy in this
4 case.

5 A. I have not testified on behalf of a utility.
6 I have not testified on behalf of an alternative gas
7 or electricity supplier. Is that fair?

8 Q. Yes.

9 A. Yes.

10 Q. Thank you. So it's fair to say on all of
11 those occasions you have either testified on behalf
12 of a consumer group or someone else?

13 A. Or the staff.

14 Q. Or the staff? And by "staff," you mean of a
15 regulatory commission?

16 A. Correct, or the state-appointed public
17 advocate.

18 Q. Have you ever worked for a retail provider?

19 A. No.

20 Q. So you don't have any experience managing a
21 private business like Just Energy?

22 A. I have no experience managing an entity like

1 Just Energy.

2 Q. Or a retail provider like Just Energy?

3 A. No. I manage my own business, but I'm sure
4 that's not what you had in mind.

5 Q. Right.

6 A. I understand.

7 Q. Okay. I want to ask you some questions
8 about complaint levels. One of the things that I
9 understand from reading your testimony was that you
10 say that complaint levels can provide a valuable
11 signal to the retailer. Is that a fair summary?

12 A. I believe I stated in my testimony, and if
13 we want to go to my testimony we can, that both the
14 level and content of complaints can provide valuable
15 signals or red flags to regulators and management of
16 any company with respect to the conduct of their
17 business.

18 Q. And that's true whether or not the complaint
19 is ultimately validated or not, correct?

20 A. To some extent, yes, and to some extent
21 relates to the volume and pattern of the complaints
22 that are coming through the door.

1 One complaint could trigger a very
2 significant potential defect in your company's
3 procedures but more typically it is the volume and
4 the analysis of the complaints that would tell you
5 whether there's a pattern or need for further
6 investigation.

7 Q. And what I want to do is I want to give you
8 an illustration and then see if you agree.

9 So in our case in particular, if you
10 have a volume of customer complaints that deal with
11 or have a common element of an understanding of the
12 contract --

13 A. Yes.

14 Q. -- those complaints would provide a valuable
15 signal regardless of whether a sales contractor did
16 something wrong, correct?

17 A. They could, yes.

18 Q. Because one of the things that they might
19 indicate is that regardless of the sales
20 contractor's conduct, there's a misunderstanding on
21 the part of the consumer?

22 A. It is my experience that it is rarely a

1 misunderstanding on the part of the consumer. That
2 is the point of the complaint. They are telling you
3 that -- not you -- U.S. Energy -- they are telling
4 the management, whether it's a regulatory agency
5 that is handling complaints about utility service or
6 a private business that's collecting complaint data
7 as part of its customer service oversight function,
8 in either case, a volume of complaints will almost
9 always in my opinion result in a finding of a defect
10 in the way the company is doing business.

11 Q. And in this case you think there was a
12 pattern of complaints regarding Just Energy
13 contractors, correct?

14 A. I outlined the categories from the CUB
15 complaint files that reflected themes that I
16 identified in my testimony, yes.

17 Q. So the answer is yes?

18 A. Yes.

19 Q. Now you would agree that some part of
20 complaint levels is a function of sales activity,
21 right?

22 A. Yes.

1 Q. Now when we are talking about a pattern in
2 the case of Just Energy, are you suggesting that
3 because there's a pattern because the complaints are
4 received, whether by the company or -- and for
5 purposes of this line I'm not differentiating
6 between the source that receives the customer
7 complaint, just so we understand that.

8 A. Yes.

9 Q. Okay. So then let me backup now that you
10 have that clear. When you talk about a pattern,
11 there being a pattern of complaints in this case, is
12 it because there were a certain number of complaints
13 that involve the same nature of alleged misconduct?

14 A. Yes.

15 Q. And then is it fair to say that -- so then
16 if there were the same number of complaints received
17 but they were spread out among a greater variety of
18 types of misconduct, there may not be a pattern?

19 A. Well, the term "pattern" means that you have
20 categorized the complaints after an evaluation of
21 what they're telling you, and so patterns fall out
22 of that analysis, and if you have a number of

1 disparate complaints, there would obviously have to
2 be a pattern.

3 The question is is it meaningful? Is
4 there a way to detect a theme among the complaint
5 types, whether it has to do with the type of
6 customer complaining, the geography of the location
7 -- of the customer's location might tell you
8 something, what the customer's telling you might
9 tell you something because it's repeated over and
10 over and over again by customers who are not
11 coordinated with each other.

12 I mean, the patterns are of a wide
13 variety and it's not just one pattern. It's a whole
14 variety of potential patterns. Any large number of
15 complaints will have patterns is my point.

16 Q. One of the things -- one question I have for
17 you, after reading your testimony, is you seem to
18 suggest that because all of the complaints that were
19 received about Just Energy fall into one of their
20 categories that that indicates that they have
21 received a pattern of complaints, and what I'm
22 wondering is --

1 A. Whose "their categories."

2 Q. Well, okay, that's a good point. I

3 apologize.

4 You understand that in Just Energy's
5 compliance database they have roughly, I think we
6 were talking about, 19 different agent-related -- or
7 I'm sorry -- 19 different categories of complaints?

8 A. So we are talking about the Just Energy
9 compliance database?

10 Q. That's correct.

11 A. Okay. Then we left my discussion of the CUB
12 customer database that I provided the pattern after
13 an analysis of in my testimony.

14 Q. Right.

15 A. We are using now your categorized way of
16 sorting out the compliance database; is that --

17 Q. Well --

18 A. -- what you want to talk about now?

19 Q. Well, sure. Actually before we start
20 talking about that, can you explain for me what the
21 differences are between the CUB database and the
22 sorting that you did and the categorization that you

1 did versus the company's categorization?

2 A. Right. I did not -- I reviewed the
3 complaints in a wide variety, personally read them,
4 and immediately spotted some pretty obvious patterns
5 of categories, and so I then took, as I indicated in
6 my testimony, four different months and took all of
7 the complaints in those four months and sorted them
8 out in the way I described in my testimony, and then
9 tracked the number that fell into these obvious
10 categories that I detected in my review.

11 Q. And is one of the things that you did in
12 reviewing those complaints is you reviewed what the
13 CUB representative had written down in the consumer
14 inquiry --

15 A. Yes.

16 Q. -- reports?

17 A. Yes, as described by me and as described by
18 a CUB witness, there is a trained process that they
19 use to capture what the customer is telling them in
20 their database, and I relied on that.

21 Q. So that is one of the pieces of information
22 that you looked at --

1 A. That was entirely -- for to complaint
2 analysis, that is all I had to rely on. The rest of
3 the evidence in this case is derived in different
4 ways, but that database is based on -- or those
5 statements about those complaints is based on the
6 CUB statements in their complaint database.

7 Q. Right. You didn't make any independent
8 investigation as to the veracity of any particular
9 consumer complaint; is that right?

10 A. No, I did not.

11 Q. Just remind me. How many of those CUB
12 consumer inquiries did you look at in making your
13 analysis?

14 A. I'll go back to my testimony to refresh my
15 memory here.

16 Q. Sure.

17 A. I had -- I'm not sure I said here in my
18 testimony how many I reviewed. It was all of the
19 CUB complaints that were available at the time I did
20 this from 2007 and 2008.

21 Q. And when you say when you did this, was that
22 at the time of your testimony?

1 A. At the time of the direct testimony.

2 Q. Which was August 2008?

3 A. August, yes.

4 Q. Okay. Had you done any -- had you done that
5 kind of review at any time earlier than preparing
6 your testimony?

7 A. For this proceeding?

8 Q. Yes. And let me just back up. Did you do
9 it at any point earlier in this proceeding? Did you
10 do it before CUB had filed their complaint?

11 A. No, I did not.

12 Q. Did you do it at any point shortly after CUB
13 had filed their complaint but before, you know, I
14 guess -- let me withdraw that. I'm tangling myself
15 up there.

16 At what point did you begin to
17 conduct that review?

18 A. I cannot remember the exact date, that it
19 was the summer of 2008.

20 Q. Do you remember how much before your
21 testimony was -- your direct testimony was
22 submitted? Would you say a month?

1 A. I was probably working on my testimony for
2 weeks before it was filed, so it could easily have
3 been initiated a month before.

4 Q. And let me ask you besides reviewing all of
5 the CUB consumer complaints, what were the other
6 things that you looked at in preparing your direct
7 testimony?

8 A. The responses to the data requests that CUB
9 and the staff submitted to U.S. Energy Savings
10 Corp., all of the ones that had been submitted as of
11 the date I filed my testimony that I reviewed and
12 signed it, and considered in pursuing my concerns to
13 see if these complaints could be linked to other
14 evidence in the company's possession.

15 Q. And one of the other things you did was you
16 reviewed information in those data responses to gain
17 an understanding of the company's model -- business
18 model; is that correct?

19 A. Business model, management, training
20 materials, communications with customers, contract
21 terms, all of the responses, I reviewed all of them
22 in preparing my testimony.

1 Q. And that took about 40 hours total, right,
2 in order to do all that review and prepare your
3 direct testimony?

4 A. I don't remember the exact number of hours.

5 Q. Well, if I was to tell you that it's my
6 understanding based on a data response that you had
7 submitted a bill as of the end of 2008, which is
8 after the date of your direct testimony, that was
9 for roughly \$4400, would you have any reason to
10 disagree with that?

11 A. My invoices may have been provided to you.
12 I would be happy to confirm a particular one if you
13 want me to look at it.

14 Q. Your rate in this case is \$110 an hour,
15 correct?

16 A. It was in that year.

17 Q. Oh, and it's since graduated?

18 A. That's correct. My rates for all my clients
19 increased to \$120 an hour in 2009.

20 Q. Thank you. But as of 2008, I had it
21 correct, the hourly rate was \$110 an hour?

22 A. You are correct.

1 Q. And so if your invoice as of the end of --
2 as of the end of August 2008 was for \$4400, that
3 would indicate to you that you spent about 40 hours
4 total?

5 A. For that month, yes.

6 Q. Oh, just for that month?

7 A. I issue invoices monthly.

8 Q. But that was the total to-date as of August?

9 A. I'll take your word for it.

10 MS. SODERNA: You want to show her the request.

11 THE WITNESS: I do not have them off the top of
12 my head.

13 MR. McMANAMAN: I can. I was just --

14 MS. SODERNA: She can answer to the extent she
15 remembers.

16 MR. McMANAMAN: Q. I'm just asking would you
17 have a reason to disagree --

18 A. I do not have a reason --

19 Q. -- subject to check?

20 A. I do not have a reason to disagree.

21 Q. Okay. I want to ask you a question about
22 the phrase "tip of the iceberg." You are familiar

1 with that phrase, right?

2 A. Very much so.

3 Q. And I'm going to summarize and you tell me
4 if I'm right or wrong, but the tip of the iceberg
5 refers to the idea that the consumers who actually
6 complained about something do not represent the
7 entire universe of the people that are dissatisfied
8 with that particular product; is that a fair
9 summary?

10 A. Yes, it is.

11 Q. Okay. And I think in this case you have
12 said that the complaints that Just Energy or its
13 corporate predecessor had received back in 2007 and
14 2008 were just the tip of the iceberg; is that
15 right?

16 A. I used that phrase with regard to the CUB
17 complaints in my testimony. U. S. Energy Savings
18 Corporation for a long period of time in this
19 litigation told us they did not keep records of
20 customer complaints and had no information about the
21 categories or content of customer complaints against
22 them, so the context with which I used it was in my

1 evaluation of the CUB complaint database.

2 I would not -- I do agree that the
3 concept would be applicable to complaints that
4 U. S. Energy also received from its customers.

5 Q. Okay. So even if we were to aggregate all
6 of the complaints that U. S. Energy received in
7 2007, because I appreciate your testimony, what you
8 were saying is that you were only meaning to say
9 that with respect to the complaints that CUB had
10 received because that's all you had at that time; is
11 that right?

12 A. That is correct.

13 Q. But now since that time you received
14 information that shows all of the different
15 complaints that Just Energy or U. S. Energy Savings
16 Corp, received in 2007 from all different sources,
17 correct?

18 A. I'm not sure that is correct. We received
19 copies of -- we have received information about a
20 database, which I then used in later testimony in
21 this case, about the customer contractor or about
22 the contractor allegation database.

1 Q. Okay.

2 A. But I do not believe there is any record and
3 I do not believe U.S. Energy ever kept a record of
4 regular customer complaints that appeared at its
5 call center until very recently when they indicated
6 very late in the litigation phase of this case that
7 they were now keeping track of customer complaints
8 at their call center. That is my recollection of
9 this case.

10 Q. When was the last data response that you
11 remember receiving in this case?

12 A. I'm sorry. I don't --

13 Q. When you say "very recently," do you mean
14 just a month ago?

15 A. No. I would say in early 2009.

16 Q. Okay.

17 A. I may have discussed it in my rebuttal. If
18 you want to wait a minute, I'll try to find it.

19 Q. No, that's okay.

20 A. Okay.

21 Q. I'll go ahead, but I guess I'm just
22 confused. I just want to make sure. You don't

1 believe that you have ever received any information
2 that showed the complaint totals for 2007 from all
3 sources?

4 A. At the time I did my direct testimony, the
5 company said they didn't have any. Okay. So then
6 the question is did I have complaint information
7 from the company for my rebuttal or my surrebuttal.
8 I would have to refresh my memory, but I do not
9 believe that we do have that.

10 Q. You don't believe that you ever received it
11 even before your surrebuttal testimony?

12 A. I would be happy to have my memory refreshed
13 but I do not offhand recall it.

14 Q. I just want to check the date of your
15 surrebuttal.

16 A. Please.

17 Q. It was the end of January 2009.

18 A. That's correct.

19 MS. SODERNA: I don't know. Is there an issue
20 pending? Because I was going to suggest I think the
21 company produced boxes of information purporting to
22 respond to questions regarding complaint data --

1 MR. McMANAMAN: That's right.

2 MS. SODERNA: -- in its office, and I believe

3 that was in December 2008 if my memory serves me.

4 MR. McMANAMAN: Yes. I want to say it was in --

5 no, I want to say it was earlier than that. It was

6 certainly after Ms. Alexander's direct testimony.

7 That wasn't my point. My point was just trying to

8 bring her up-to-date what she currently knows, what

9 not what she knew in 2008.

10 MS. SODERNA: Is there a question pending?

11 MR. McMANAMAN: No, but I guess it's going to be

12 tough to ask questions on that then if the witness

13 doesn't know.

14 MR. McMANAMAN: Q. Did you get a chance to

15 review all of the DR responses from the company in

16 this case?

17 A. Yes. I will tell you that there are some

18 DRs that I noted their existence, others I spent

19 more time with to be frank.

20 Q. Right.

21 A. And the volume in here is pretty

22 significant.

1 Q. Right.

2 A. Right.

3 Q. When you ask a lot of questions you get a
4 lot of responses.

5 A. Especially when they're constantly updated.

6 Q. Right. Is that -- is that your
7 understanding of how private business works?

8 A. What private business?

9 Q. Well, any private business that's an
10 evolving process.

11 A. Oh, I don't question the fact that a private
12 business could change its procedures over time.
13 That's not my point.

14 Q. Okay. That's the only question that I have.

15 A. Okay.

16 Q. Now one of the things that you point out in
17 your direct testimony is that customers are confused
18 or appear to be confused about the identity of the
19 company, and that's on Page 25.

20 A. Are we in my direct?

21 Q. Yes, your direct.

22 A. I would like to turn to that if you don't

1 mind. Yes.

2 Q. On Page 25 you're indicating that some of
3 the words that U. S. Energy Savings' contractors
4 might use would tend to confuse a customer. Do you
5 see that?

6 A. Yes.

7 Q. And they are words like eligible or quality?

8 A. Qualify.

9 Q. I'm sorry, qualify. I can't read my own
10 writing. Thank you. And I don't know if you know
11 there the word protection, do you?

12 A. No. I'm noting the word registration.

13 Q. Okay. But would you agree with me that
14 protection would also fall in that category?

15 A. No.

16 Q. Why not?

17 A. Because the words I'm using here are the
18 words that are used and that were reflected in the
19 training script that U. S. Energy uses to make it
20 appear to people that this is something of a unique
21 opportunity for them and that there is something
22 official about the nature of the opportunity that is

1 being offered to them.

2 Q. Okay. So let's break that down. Is there
3 anything wrong in your mind about making it sound
4 like it's a unique opportunity?

5 A. If what you are doing is suggesting that
6 people have to be qualified for the program, or
7 eligible for the program, or register for the
8 program, yes. Those are the words I used here that
9 I felt were potentially misleading to people who did
10 not understand perhaps the notion of a customer
11 choice environment in which they were operating.

12 Q. Okay. Maybe let's work around the other
13 way. You tell me if I'm wrong. I understand that
14 making it sound official is wrong, because it makes
15 it sound as if you are associated with a government
16 agency or some other group that has sanctioned
17 you --

18 A. Or the utility.

19 Q. -- or the utility itself. Is that a fair
20 statement?

21 A. Yes.

22 Q. So I understand the official part, but are

1 you telling me that you think it's wrong in the
2 context of a potential sale to make the opportunity
3 sound unique?

4 A. It's certainly appropriate to make your
5 product sound unique and an opportunity. I have no
6 -- I did not criticize that.

7 Q. Okay. So that's not what you meant when you
8 were referring to those words?

9 A. That is correct.

10 Q. Now I think you also note that the company
11 suggests or directs their people to -- or their
12 sales contractors to look like utility workers; is
13 that right?

14 A. I referenced a training document that
15 advised agents to wear "utility work pants."

16 Q. So I'm right that is part -- that is one of
17 the things that you say in your testimony?

18 A. I said that that is clear that that training
19 program or instruction existed in at least one of
20 your offices in Chicago.

21 Q. Right. Do you know where that document came
22 from?

1 A. It came from the visit of Mr. Paul Goddard
2 in early 2008.

3 Q. Do you know where he found that document?

4 A. I do not know which office he found that
5 document in.

6 Q. It's your understanding that he found it at
7 one of the sales offices in the Chicago area?

8 A. That is what we asked for in our data
9 request and it was in that material submitted in
10 response to that.

11 Q. Is it your understanding that that was a
12 document that was given to the sales office by the
13 corporate head office in Ontario?

14 A. I do not know.

15 Q. Did you make any effort to find out?

16 A. No, because it doesn't matter.

17 Q. Okay. Now that document that says utility
18 pants, do you think that that would make a sales
19 contractor look like he was from a utility?

20 A. I believe that was the clear intent of the
21 advice.

22 Q. Is that -- is that the understanding that

1 you formed --

2 A. Yes.

3 Q. -- that someone who wears utility-style
4 pants look like a utility worker?

5 A. Yes.

6 Q. So if you saw someone wearing a pair of dark
7 navy pants, you would think they work for a utility?

8 A. I don't ascribe a color and style to this
9 description. I presume the intent is to try to look
10 like a utility meter worker.

11 Q. Okay. Now I want to ask you some questions
12 about the idea of an economic benefit. You are
13 familiar with that phrase in this case?

14 A. I am. Yes, I am.

15 Q. I just want to confirm that when you use the
16 phrase "economic benefit" you mean savings to a
17 customer; is that right?

18 A. I do. Economic benefit means money.

19 Q. And that's the only thing that it can mean,
20 money?

21 A. In the context in which I am using that
22 phrase in this case, that is what it means. There

1 are other benefits, but economic benefit is a
2 monetary benefit. That's how I'm using this word.

3 Q. Is that true for any kind of product, you
4 know, any kind of goods or service that the economic
5 benefit of that product is -- is the monetary
6 element of that product?

7 A. I fully agree with the notion that people
8 make decisions about products they buy that in some
9 cases are unrelated strictly to dollars and cents.

10 Q. Okay. And what you are saying is that
11 there's no economic benefit to the 5-year fixed
12 priced contracts that U. S. Energy Savings sells
13 unless the customer actually saves money; is that
14 right?

15 A. I made the observation which has been
16 confirmed --

17 Q. Wait. I'm sorry. Am I right or wrong?

18 A. No. I'm trying to understand your question.
19 I'm sorry.

20 MS. SODERNA: Can you repeat the question.

21 MR. McMANAMAN: Sure.

22 THE WITNESS: Yes, help me out.

1 MR. McMANAMAN: Q. Is it your opinion that
2 there's no economic benefit of a five-year fixed
3 price product or a contract like U. S. Energy
4 Savings sells unless the customer saves money?

5 A. There is no economic benefit unless the
6 customer has a realistic opportunity to get a
7 product for something less than what they would end
8 up paying to their utility, and there are other
9 attributes to the fixed price product and some
10 people may want to pay more than the local utility
11 would charge them. I fully acknowledge that.

12 The potential motivation exist, but the
13 term "economic benefit" as I'm using it refers to
14 the differential between their ability to get a
15 competitive natural gas product from a company that
16 markets itself as the U. S. Energy Savings
17 Corporation that would provide them with something
18 that they would not otherwise have from their
19 utility in the form of lower utility bills and, in
20 my experience, that is the number one prime
21 motivation for customers to be interested in
22 competition in natural gas and electricity, and

1 there are many surveys that I can point you to that
2 document, but that is the number one motivation of
3 customers in a competitive utility marketplace.

4 Q. I actually have a couple of those we can
5 talk about in a minute.

6 A. Okay.

7 Q. One of the things I wanted to ask you, but
8 what I want to make sure though is that because I
9 don't know that I got a short answer --

10 A. You didn't.

11 Q. -- to my question -- I know I didn't get a
12 short answer but a yes or no. I want to make sure
13 that it's clear -- is that there is no economic
14 benefit of a five-year fixed price contract unless
15 it results in savings to the customer?

16 A. Under my definition of economic benefit, the
17 answer to that is yes.

18 Q. Of course, we are working under your
19 definition.

20 A. Yes.

21 Q. That's your opinion?

22 A. Yes, it is.

1 Q. There's no way to know at the outset of the
2 five years whether you are going to save money or
3 not, is there?

4 A. No, there is not.

5 Q. Well, but actually I take that back, and I'm
6 not trying to trick you, but that's not actually
7 true either, is it? Because if the price was so
8 high, if the price was a hundred dollars a therm,
9 you could be assured that you were not going to save
10 money; is that right?

11 A. I don't know who the "you" is.

12 Q. You, I'm saying "you" as in the anonymous
13 customer. If somebody came to you and said I'll
14 charge you a hundred dollars a therm for the next
15 five years, you could be virtually assured you would
16 not save money; is that right?

17 A. Assuming I know how my natural gas is
18 priced, and I knew that it was cents or a dollar per
19 therm as opposed to the 100 that you are promising
20 me, yes, I agree that's quite straightforward.

21 Q. And the opposite would be true if somebody
22 said to you I'll sell you gas for one cent a therm

1 and, you know, we are obviously assuming our actual
2 experience over the last few years, if I sell it to
3 you for one cent a therm over the next five years,
4 you would be virtually certain to save money, right?
5 The only way you wouldn't save money is if they gave
6 it to you for free; is that right?

7 A. Well, of course, just using numbers.

8 Q. Right.

9 A. But neither of them, of course, are
10 realistic.

11 Q. Are realistic.

12 A. Right.

13 Q. I'm just trying to demonstrate a point so
14 that I can get to the point which is at the outset
15 of a 5-year contract no one knows whether they will
16 actually save money or not after a full five years,
17 right?

18 A. Who is the "no one?" You know that. I know
19 that. The question is what did these people
20 understand about the transaction that was being
21 offered to them, and that's the perspective we need
22 to have to answer your question. I'm having

1 difficulty.

2 Q. You are having difficulty with that?

3 A. Yes.

4 Q. So you don't have any difficulty just
5 yourself personally understanding that you can't
6 predict prices five years out?

7 A. I do not have a problem understanding that.

8 Q. Okay. But you think that certain consumers
9 here in Illinois have a problem understanding that?

10 A. I believe they were not given
11 straightforward information that would allow them to
12 make that decision.

13 Q. Okay. Are you familiar with the price of
14 gas in Illinois, the historical prices here in
15 Illinois?

16 A. The numbers involved that I know are derived
17 from the gas market monitor, and by the price of
18 gas, are you talking about the purchase gas
19 adjustment clauses for each of the different
20 utilities or are you talking some wholesale market
21 spot market price or what?

22 Q. I'm talking about the price per therm that

1 you would see -- that a customer would see on their
2 bill if they were with their default provider.

3 A. The purchase gas adjustment, is that fair to
4 say that?

5 Q. Sure, we can use the PGA. I'm just looking
6 for a copy of the gas market monitor that you just
7 referred to.

8 My understanding of the gas market
9 monitor, and correct me if I'm wrong, is that it
10 will list the price per therm rates of the
11 particular retailer, but it doesn't show you what --
12 on a price-per-therm basis what you as the customer
13 paid over the course of, you know, the past two
14 years, three years, four years.

15 A. There's a separate section of that website
16 that tells you what the utility purchase gas
17 adjustment price is on a historical basis and they
18 use that to figure those calculations.

19 Q. Okay. So that's in a different area than
20 where these are printed showing what the contract
21 rates offered at a given time are?

22 A. That's right. The purpose of this

1 particular section of the website is to allow the
2 customer to compare any number of alternative gas
3 marketers to their local utility historical price.

4 MR. McMANAMAN: And I guess I should just say
5 that the witness and I were just referring very
6 generally to CUB Cross Exhibit 15 for the record.

7 MR. McMANAMAN: Q. You were here for the
8 testimony this morning of Mr. Potter, correct?

9 A. I was.

10 Q. And I think one of the things -- and I'm
11 just trying to make this go faster. One of the
12 things that -- maybe I'll just show you an exhibit
13 and that will help us out if I can just find where I
14 put it.

15 I'm going to mark this as Respondent's
16 Exhibit No. 2.

17 JUDGE GILBERT: That's Respondent's Cross No. 2.

18 MR. McMANAMAN: I'm sorry. Cross. Thank you,
19 your Honor.

20

21

22

1 (Whereupon, Respondent's
2 Cross Exhibit No. 2 was
3 marked for
4 identification.)

5 MR. McMANAMAN: Q. I will show this to you.

6 A. Uh-huh.

7 MR. McMANAMAN: This is No. 2, your Honor.

8 MR. McMANAMAN: Q. Okay. Have you had a chance
9 to look at that document?

10 A. Yes.

11 Q. And do you see the per therm pricing
12 represented on the first page in the graph -- on the
13 first page of this document?

14 A. I do.

15 Q. Do you have any reason to disagree that
16 that's been the actual experience here in Illinois
17 over the dates at the bottom of the graph?

18 A. I personally have not verified the accuracy
19 of this graph, but, for the purposes of any
20 discussion with you, I would be happy to assume it's
21 correct --

22 Q. Okay. Because all I want --

1 A. -- because your company prepared it, not me,
2 and I have not reviewed it --

3 Q. Right.

4 A. -- for that purpose.

5 Q. Okay. Fair enough. Fair enough.

6 A. Yes.

7 Q. So on this graph it indicates that -- the
8 graph starts on August '03 over on the left. Do you
9 see that?

10 A. Yes, I do.

11 Q. And then it runs to August '08 on the
12 right.

13 A. I do.

14 Q. And it looks to me like the price per therm
15 of gas over that period of time started off at close
16 to 60 cents per therm. Do you see that?

17 A. Yes, I do.

18 Q. And that's what this graph indicates, right?

19 A. Yes, that's what it says.

20 Q. And it looks like there's been a couple
21 peaks and valleys, but it looks like the highest
22 peak is towards the end of the graph, and you can't

1 see exactly what price that is, but it's somewhere
2 above \$1.40 a therm. Do you see that?

3 A. I see that.

4 Q. Okay. So do you have any reason to disagree
5 that at some point in 2008 the price per therm of
6 gas in Illinois rose above \$1.40 in the Peoples Gas
7 area?

8 A. In the summer of 2008 at the lowest usage
9 for natural gas, yes, it did peak at that rate.

10 Q. Okay. That's not -- that's more than what I
11 asked, but I appreciate it.

12 A. I think the dates are very important.

13 Q. Okay. And do you see that there's another
14 point in time towards the middle of the graph,
15 there's another spike or high point in the graph I
16 should say?

17 A. Yes, in the winter of 2005 and 6.

18 Q. Right. And it looks --

19 A. Yes.

20 Q. -- like the price there was around \$1.20 a
21 therm.

22 A. That's correct.

1 Q. And I just want to point out for the record
2 that this graph you can't tell exactly.

3 A. I appreciate that.

4 Q. But you would agree with me that it's around
5 \$1.20?

6 A. It shot upwards dramatically.

7 Q. There could have been a point in time it
8 looks like in late '06 where it was the lowest over
9 the whole five years, and that would have been again
10 somewhere around 60 cents a therm.

11 A. Right.

12 Q. Is that about right?

13 So what I want to know from you is is
14 it your understanding that, at least here in
15 Illinois, over the five years between August 2003
16 and August 2008, the price of natural gas on a per
17 therm basis from Peoples Gas had fluctuated from
18 between around 60 cents to as high as \$1.40 or so?
19 I know those are approximate --

20 A. There are points --

21 Q. -- dollars.

22 A. -- on this graph that show that low point

1 and there are points on this graph that show the
2 high point, yes.

3 Have you calculated the average price
4 per therm over this period in this graph?

5 Q. Does it appear that it's calculated?

6 A. It does not appear that it has been.

7 Q. Then it hasn't.

8 A. Okay.

9 (Whereupon, Respondent's
10 Cross Exhibit No. 3
11 was marked for
12 identification.)

13 Q. Okay. I will show you what's marked as
14 Respondent's Cross Exhibit No. 3.

15 A. Yes.

16 Q. It should look familiar. And do you
17 recognize that document?

18 A. I do.

19 Q. Is this an article authored by you?

20 A. It is.

21 Q. And can you tell us what the article is?

22 A. Yes. I was hired by the National Center for

1 Appropriate Technology to do an analysis of what was
2 happening in states that had adopted restructuring
3 for residential customers --

4 Q. Can I just switch with you real quick?

5 A. You sure can.

6 (Whereupon, documents
7 were switched.)

8 Q. I apologize.

9 A. That's okay -- and, as evident from the
10 title, I did some case studies and looked at
11 Maryland, Montana, Connecticut, New Jersey,
12 Massachusetts, and Pennsylvania, and then I made
13 some recommendations in this paper about default
14 electricity service.

15 Q. Okay. So this is about electricity service,
16 but do the concepts or -- let me back up. As you
17 just said, this had to do with electric service,
18 right?

19 A. Yes. I wrote a similar paper for the
20 natural gas industry.

21 Q. You did? When was that?

22 A. I attached it to my data response to you. I

1 don't know how you labeled yours -- U. S. Savings
2 Corp., 5-7.

3 Q. Okay. Did you do that in January 2004?

4 A. The paper in 2004, yes. Yes.

5 Q. I have got it. You are getting ahead of me.

6 A. That's okay. I will take it where you want
7 to go.

8 Q. Are the concepts that you talk about in here
9 applicable to natural gas as well as electricity?

10 A. I believe they are.

11 Q. And am I right in understanding that one of
12 the points of this article is that one of the ways
13 to reduce volatility or that I should say that
14 people or -- I'm sorry -- that utilities should
15 attempt to reduce volatility in prices; is that
16 right?

17 A. Yes.

18 Q. And having less volatility in prices is a
19 good thing, is that right, for consumers?

20 A. For residential customers to avoid extreme
21 volatility is a good thing.

22 Q. And one of the ways that you can reduce

1 volatility is by having a diverse portfolio?

2 A. A diverse portfolio, absolutely, with annual
3 changes in prices to reflect the portfolio.

4 Q. Because that will reduce the risks of price
5 change to the consumer, right?

6 A. Right, and the sub-text of this paper is to
7 avoid passing through wholesale market spot prices
8 to residential customers --

9 Q. Okay.

10 A. -- to manage the portfolio to provide price
11 stability.

12 Q. Right. And one of the ways that a provider
13 will do that, whether they're a default provider or
14 a retailer --

15 A. Yes.

16 Q. -- is to buy forward-looking instruments,
17 right?

18 A. That is one way to do that. There are many,
19 but I agree that's one of them.

20 Q. What are some of the other ones?

21 A. Entering into bilateral contracts, buying
22 hedging instruments, buying a portfolio that has a

1 whole variety of contract terms in them, you know,
2 six months, one year, three years, maybe one
3 contract have a five-year portion of the portfolio,
4 and I'm using those in a hypothetical way to explain
5 the concept much as any reputable broker would
6 recommend that you manage your investment portfolio.

7 Q. Those financial instruments have a cost,
8 correct?

9 A. Absolutely.

10 Q. That's going to be get passed on to
11 consumers, right?

12 A. Absolutely.

13 Q. So there's a question as to how much of
14 those costs to incur?

15 A. That's correct. How far do you go in
16 assuring fixed prices for any lengthy period of
17 time, how much stability do you tolerate and at what
18 price, that is the question, absolutely.

19 Q. And when you say "the question," it's really
20 the with quotes around it is "the question?"

21 A. It is.

22 Q. Correct?

1 A. It's a question for a manager of a
2 portfolio, and it's complicated in our system by the
3 fact that the utilities who are managing these
4 portfolios are subject to regulatory approval, and
5 fears of imprudence, and so forth from their
6 regulators, but, yes, that is any portfolio manager
7 has to make that balance.

8 Q. But it's not just the question to the
9 manager of the portfolio, right, because it's also
10 the question to the regulatory commission?

11 A. Absolutely, in reviewing the proposed
12 portfolio, yes.

13 Q. One of the things that a regulatory
14 commission is going take into account is should our
15 ratepayer base have to bear that cost, correct?

16 A. They will bear the cost. The question is is
17 it a reasonable cost, you know, have we moved too
18 far into the business of protecting ourselves from
19 volatility, and what is the price of protecting
20 ourselves from volatility, and that is a judgment
21 call, no question about it.

22 Q. Right. So it's a judgment call as to

1 whether to have the risk of volatility or the cost
2 of stability; am I right?

3 A. Right. All I'm pointing out is that it's a
4 continuum. It's not an either/or. There is a wide
5 range of possible outcomes.

6 Q. A concern that a regulatory commission might
7 have though is whether its ratepayers should have to
8 bear that cost, the cost of stability?

9 A. Right, but --

10 Q. Is that right?

11 A. Yes, it is something they're concerned
12 about --

13 Q. Okay. Okay.

14 A. -- but balancing that is the pressure being
15 put on them by those same ratepayers --

16 Q. Right.

17 A. -- to provide some stability for essentially
18 utility service, so that's the balance that they
19 have to reach.

20 Q. The ratepayers are pressuring or providing
21 pressure for stability?

22 A. That's correct.

1 Q. Okay. Now before you got ahead of me, this
2 was the next document I was going to show you.

3 A. I'm sorry.

4 Q. That's my fault. I'm not moving fast
5 enough. You are keeping me on my toes.

6 Okay. Do you recognize this article
7 then --

8 A. I do.

9 Q. -- I have given you, and is this article
10 that we were just talking about a minute ago the
11 article that you wrote in January 2004?

12 A. Yes. This is the article that I used as the
13 basis for my statements about what regulators
14 typically do with natural gas pricing in my
15 testimony.

16 Q. Let me just do the same switch with you as
17 before.

18 A. I understand.

19 Q. I keep giving you the one on the top of the
20 stack.

21 And is it fair for me to say that this
22 article provides more detail than Respondent's Cross

1 Exhibit No. 3 concerning the background of the issue
2 of volatility versus stability?

3 A. Well, in the sense that this paper is
4 directly targeted to an analysis of how prices are
5 pricing natural gas supply, yes.

6 Q. And in this paper it's fair for me to say
7 that you have advocated in favor of stability; is
8 that right?

9 A. I advocate for the consideration of price
10 stability in urging regulators to have their utility
11 manage a portfolio rather than merely passing
12 through a hundred percent of the cost of the
13 wholesale market spot price for natural gas on a
14 monthly basis, yes.

15 Q. But when they're passing it through the spot
16 price, that's not really a cost. That's a risk,
17 right?

18 A. I'm sorry. Start again.

19 Q. Well, you said that instead of passing
20 through the cost of a spot price, what you are
21 saying in this article is you are advocating against
22 passing through a hundred percent of the risk of the

1 spot price --

2 A. Well --

3 Q. -- because if you don't do anything you are
4 going to get spot price, right?

5 A. Yes.

6 Q. I know it's a matter of perspective.

7 A. Right. In a state which urges its utility
8 to rely almost entirely on spot market or short-term
9 purchases, I contrast that with other regulatory
10 commissions who have required the utility to manage
11 a more active portfolio with a wide variety of
12 different kinds of contracts for the natural gas
13 supply. The intended purpose is to dampen the risk
14 of extreme volatility in the wholesale market.

15 Q. Have you ever studied what the default
16 providers do here in Illinois?

17 A. The utilities?

18 Q. Yes. Have you or not?

19 A. At one point I believe that I did have a
20 good understanding of that, but that is a dated
21 perspective and I cannot claim that I have reviewed
22 the Commission's directives in this regard in the

1 last three or four years, but it is my understanding
2 that the PGA in Illinois is heavily weighted to
3 short-term purchases, but I know it is not entirely
4 so, but I do not know the composition.

5 Q. Well, what was roughly the date that you
6 were familiar with it or that you did look at the
7 issue?

8 A. This would probably have been in 2003 or
9 2004.

10 Q. So about five years ago?

11 A. That's correct.

12 Q. Is that fair?

13 On Page 16 of your direct testimony --

14 A. Yes.

15 Q. -- you say that door-to-door sales create
16 the potential for high-pressure sales tactics. Do
17 you see that?

18 A. Yes.

19 Q. Door-to-door sales aren't the only kind of
20 sales that create that potential, right?

21 A. I concentrated my comments about
22 door-to-door sales because that is the market model

1 at issue in this proceeding. I am aware of abuses
2 in telemarketing which led to some federal laws that
3 has dramatically reduced that type of abusive sales
4 technique.

5 Q. But the answer to my question is yes?

6 A. Oh, of course.

7 Q. So it's not just the fact that it's door to
8 door that creates the high pressure. You could
9 create high pressure in any kind of sales situation,
10 right?

11 A. Could, yes. Could, of course.

12 Q. And you can say misleading things in any
13 kind of sales situation, right?

14 A. It is possible to do so, yes.

15 Q. And can you do it very easily in
16 telemarketing; isn't that that?

17 A. That's correct, which is why we have the Do
18 Not Call Rule in effect nationally.

19 Q. One of the other things you mentioned on
20 Page 16 is that door-to-door sales have the
21 potential to prey on various groups. Do you see
22 that?

1 A. Yes, I do.

2 Q. And did you take -- did you undertake any
3 analysis to figure out how many of U. S. Energy
4 Savings' customers are disabled?

5 A. I believe I provided some information about
6 that in my evaluation of the zip codes and the
7 census data, and I'm going to page through my
8 testimony and see where I put it. Some of that had
9 to do with -- I want to use the right term, so I'm
10 going to look before I speak -- supplemental
11 security income. I'm on Page 39 of my direct, and
12 the zip codes provide -- the U. S. Census data will
13 provide you with the population who receives
14 supplemental security income which is often
15 associated with, not exclusively, but almost often
16 associated with disability.

17 Q. Did you check to see how many of the people
18 that actually signed contracts are disabled?

19 A. Of course not. The company does not
20 maintain that information, and I --

21 Q. So you have no way of knowing other than
22 this kind of reference to general population

1 statistics?

2 A. I was going to finish and say that we have
3 examples from the CUB complaint files, some of which
4 I quoted here, that indicate disability, but I do
5 not have a number derived from an analysis of the
6 company's contracts, no such analysis could occur.

7 Q. It couldn't occur?

8 A. You don't record that information in your
9 contract file in a way that would allow us to know
10 that.

11 Q. You could investigate it yourself, correct?

12 A. How would I do that? I'm sorry. Maybe I
13 shouldn't ask you that question, but there is no way
14 to determine from your database, let me put it that
15 way, as to whether the customer's disabled, or on
16 supplemental social security, or not.

17 Q. So you are just surmising that based on
18 statistics?

19 A. Well, I said what I said here, and I quoted
20 from some CUB complaint files, and I have indicated
21 that marketing occurs more frequently in those zip
22 codes than others. Beyond that, I do not have

1 information from your database on that fact.

2 Q. What database did you look to to tell if a
3 consumer is frail?

4 A. I did count the number of individuals in the
5 complaint files who told us that they were elderly,
6 and/or senior, and I did not count the word frail.

7 Q. So but in your testimony you use the word
8 frail, right?

9 A. Yes. I'm using that as an indication of
10 people who are elderly and of significant elderly
11 and may not be able to get about in the way that you
12 and I do in the local neighborhood.

13 Q. So what you are saying is that, well --

14 A. They're home bodies --

15 Q. How --

16 A. -- that's how I use it.

17 Q. How are you able to tell if a person is
18 frail or meets that definition? Where do you look
19 for that?

20 A. I'm using that as a generic word for the
21 people I just described, home bodies, unable to get
22 out and about and, therefore, home for these kinds

1 of calls.

2 Q. Right. And I'm sorry. That was a poor
3 question.

4 Where did you look to find out how many
5 of those people had signed contracts?

6 A. I did not find that out.

7 Q. You also indicated that you believe sales
8 contractors are incented to make misrepresentations.
9 Do you remember that testimony?

10 A. The commission method of paying them carries
11 with it the obvious incentive to get contracts into
12 the system for which their salary depends on them
13 for any money.

14 Q. So let me just make sure I understand this.
15 They're incented to make misrepresentations because
16 if they make the misrepresentation, they'll have the
17 contract, and if they have the contract, they can
18 get paid for it?

19 A. I said it was an obvious temptation -- this
20 is my word -- to obtain contracts without proper
21 authorization or obtain contracts based on
22 misleading statements delivered in person, because

1 statements made by a sales agent carry far more
2 weight and impact with most consumers than the fine
3 print of a document that is left behind.

4 Q. And you used the word "temptation."

5 A. Yes.

6 Q. Is that right? The top of Page 17, right?

7 A. Yes.

8 Q. Got it.

9 In your -- now are you familiar with
10 businesses that have internal sales forces?

11 A. Define internal?

12 Q. Well, people that are their employees.

13 A. Oh, yes.

14 Q. And what if you had a business that had, you
15 know, sales employees that are on salary. Okay.

16 That means that their -- their compensation is not
17 dependent on any particular sale, correct? Is that
18 your understanding?

19 A. Well, it could be structured that way. It
20 could be structured in a way that they get bonuses
21 for the volume of sales that they provide or that
22 they get a base salary and a compensation on top of

1 it for some outstanding effort. I mean, I agree it
2 could be a variety of ways.

3 Q. Those types of employees could also have
4 quotas, right?

5 A. I suppose.

6 Q. Sales quotas?

7 A. I don't know what they have.

8 Q. They could?

9 A. I will grant you that.

10 Q. Do you know any salespeople --

11 A. I do not know the salespeople's method of
12 their income. I know people in sales, but I don't
13 know those details of their economic life. I'm
14 sorry.

15 Q. Sure. I guess what I'm asking is it seems
16 like you are saying you are unfamiliar with the
17 concept of salespeople having quotas, is that right
18 or am I wrong?

19 A. I'm not familiar with the notion of
20 salespeople having quotas. I don't know what you
21 mean by -- do you mean something disciplinary
22 happens to them if they don't sell --

1 Q. A certain amount.

2 A. -- a certain amount?

3 Q. Yes.

4 A. Maybe.

5 Q. That is exactly what I mean.

6 A. I am not familiar with that in the energy

7 industry. It may be used elsewhere. I don't know.

8 Q. If somebody did have such a situation where

9 they had -- they're in sales and they have a quota,

10 would you expect -- and it's the employer that's

11 imposing the quota or setting the quota, would you

12 expect if they fail to meet that quota that they

13 wouldn't have their job any more?

14 A. If someone set up a system like that, what

15 you describe would be the natural import of it.

16 Q. So then a person in that situation would

17 have the same incentive to make a sale?

18 A. They might have the same incentive, yes, I

19 agree.

20 Q. Would their incentive be any different than

21 a person who's a hundred percent commission-based?

22 A. I am not familiar with the method you are

1 describing, but it sounds like it could have the
2 same impact to me, yes.

3 Q. Okay. I want to -- let's see here. I want
4 to ask you a couple of questions about exit fees,
5 and when I say "exit fees," I mean that to include
6 -- I know it's also referred to as early termination
7 fees. Is that -- is your understanding the same?

8 A. Yes, it is.

9 Q. So if we use exit fees, is that okay with
10 you?

11 A. Yes.

12 Q. Now I understand.

13 JUDGE GILBERT: Let me stop you for a moment.

14 Let's go off the record for a moment.

15 (Off the record.)

16 Back on the record.

17 MR. McMANAMAN: Q. Okay. Exit fees is the
18 issue. It's your opinion that the exit fee
19 structure that U. S. Energy Savings had in place in
20 2007 was punitive to customers; is that right?

21 A. I used the word exorbitant. Punitive would
22 also fit in my view of it.

1 Q. I'm just going to represent to you that you
2 used the word punitive --

3 A. I believe it.

4 Q. -- and that was because -- tell me if I'm
5 wrong. The basis of your opinion is because it
6 would punish someone for leaving the contract early;
7 is that right?

8 A. Unduly so.

9 Q. Unduly so?

10 A. Yes.

11 Q. Because they would be responsible for paying
12 an amount of money that was unfair to them; is that
13 right?

14 A. Yes.

15 Q. And why would that money be unfair -- that
16 amount of money be unfair to them?

17 A. Because what you were trying to do is not
18 recoup the actual costs that you incurred to manage
19 your portfolio of gas supply, rather you were
20 getting all of your lost profits from this customer.

21 Q. All of the company's lost profits?

22 A. That is what you told us you were doing.

1 Q. Are you familiar with the company's cost
2 structure?

3 A. No.

4 Q. I'm going to show you a response to a data
5 request. I'll throw a number out here for you.

6 JUDGE GILBERT: Respondent's Cross Exhibit 5 is
7 that the intention?

8 MR. McMANAMAN: Five, yes, your Honor.

9 THE WITNESS: You don't want to give me this one.

10 MR. McMANAMAN: Q. That one's okay. This one I
11 do. I am finally on the ball, however, don't stop
12 me now.

13 (Document tendered.)

14 A. Okay.

15 Q. And if you can turn to the request 3.20 --

16 A. 3.20.

17 Q. -- No. 5 for present purposes, did you find
18 that?

19 A. 3.20, yes, sir.

20 Q. Okay. Now you reviewed company's data
21 request responses in this case, right?

22 A. Yes.

1 Q. So have you seen this before?

2 A. I believe that I have.

3 Q. Okay. And do you understand -- let me just
4 make sure that I identify this for the record. We
5 are talking about the request that -- 3.20 that
6 starts at the bottom of Page 10 and then the answer
7 goes onto Page 11, correct?

8 A. Yes.

9 Q. And the answer is essentially the table that
10 appears on Page 11. Do you see that?

11 A. There is a table. We need to be clear about
12 what the table is, but there is a table here, I
13 agree.

14 Q. What do you understand that table to be?

15 A. It says "The table below employing
16 information from January 2008 is one example of
17 price point data. As a result, I do not believe
18 this information responded to the data request at
19 issue, nonetheless, I would be happy to talk about
20 the table if you like."

21 Q. Do you think that this table reflects the
22 company's cost structure?

1 A. For January 2008.

2 Q. Well, it's actually for the contract price
3 of \$1.09. Do you see that in the table?

4 A. Yes, I do.

5 Q. Okay. And what was the company's exit fee
6 policy in 2007?

7 A. Ten cents per therm times the number of
8 years the customer had not completed the contract.

9 Q. Okay. And do you see on this table that the
10 commodity price was listed as 83 cents?

11 A. That's what it says here.

12 Q. Do you have any reason to disagree that when
13 the company was charging \$1.09 per therm it was
14 paying 83 cents for the commodity?

15 A. I do not have any grounds to conclude that
16 the blended price of your entire portfolio of
17 natural gas products to serve your customers was 83
18 cents.

19 Q. Well --

20 A. I do not know that. That's all I'm saying.

21 Q. So it's your understanding that the company
22 has a blended portfolio for particular customers?

1 A. The company is buying a massive amount of
2 gas in the wholesale market to meet the needs of its
3 retail customers.

4 Q. Right. Do you understand how they make
5 their purchasing?

6 A. No. The company refused to provide a lot of
7 that information in any significant detail, but I
8 cannot conceive of it being other than a managed
9 portfolio of products.

10 Q. Well --

11 A. If I'm wrong, I will -- I mean, that's what
12 my presumption is and not based on my review of any
13 of the information that you may have in your
14 possession.

15 MR. McMANAMAN: Judge, I think we just need to go
16 into in camera for these next few questions.

17 JUDGE GILBERT: All right. Go in camera.

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